



U.S. ENVIRONMENTAL PROTECTION AGENCY

## OFFICE OF INSPECTOR GENERAL

### *Spending Taxpayer Dollars*

# EPA Region 5 Has Adequate Policies and Procedures for Addressing Sexual Harassment Allegations

Project No. OA-FY16-0177

June 20, 2017

This is a discussion document on the subject audit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. You are not authorized to distribute or disclose this discussion document or its contents, except that you may distribute it to other persons in your organization to obtain their review and comments on the document's subjects.

**Report Contributors:**

Angela Bennett  
Lela Wong

**Abbreviations**

CFR	Code of Federal Regulations
EEO	Equal Employment Opportunity
EEOC	U.S. Equal Employment Opportunity Commission
EPA	U.S. Environmental Protection Agency
LERIS	Labor and Employee Relations Information System
OIG	Office of Inspector General

**Are you aware of fraud, waste or abuse in an EPA program?**

**EPA Inspector General Hotline**  
1200 Pennsylvania Avenue, NW (2431T)  
Washington, DC 20460  
(888) 546-8740  
(202) 566-2599 (fax)  
[OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov)

Learn more about our [OIG Hotline](#).

**EPA Office of Inspector General**  
1200 Pennsylvania Avenue, NW (2410T)  
Washington, DC 20460  
(202) 566-2391  
[www.epa.gov/oig](http://www.epa.gov/oig)

Subscribe to our [Email Updates](#)  
Follow us on Twitter [@EPAoig](#)  
Send us your [Project Suggestions](#)

**DISCUSSION DOCUMENT – NOT TO BE RELEASED OUTSIDE EPA**



# At a Glance

## Why We Did This Audit

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this audit in response to a congressional request to determine whether EPA Region 5 managers appropriately handled sexual harassment allegations. The objective of the audit was to determine whether EPA Region 5's policies and practices for addressing sexual harassment complaints made through the Equal Employment Opportunity (EEO) complaint process and human resources complaint process adhere to established policies and meet federal requirements.

**This report addresses the following EPA goal or cross-agency strategy:**

- *Embracing EPA as a high-performing organization*

Send all inquiries to our public affairs office at (202) 566-2391 or visit [www.epa.gov/oig](http://www.epa.gov/oig).

[Listing of OIG reports.](#)

## ***EPA Region 5 Has Adequate Policies and Procedures for Addressing Sexual Harassment Allegations***

### What We Found

EPA Region 5's policies and practices for addressing sexual harassment allegations adhere to EPA policies and procedures and meet federal requirements in 29 CFR §§ 1604.11 and 1614, as well as U.S. Equal Employment Opportunity Commission guidance.

**Region 5 addressed complaints in accordance with agency policies and procedures. No recommendations are being made.**

EPA's sexual harassment complaints may be filed through the human resources or EEO complaint process. Region 5 identified 12 sexual harassment complaints processed between fiscal years 2012 and 2016—six processed by the region's Human Resources Branch and six by the region's Office of Civil Rights. Our review of the case files for the 12 complaints, and interviews with the EPA officials involved in resolving these complaints, confirmed that Region 5 addressed the complaints in accordance with agency policies and procedures.

Because pertinent policies and procedures were in place and being followed, no recommendations are being made.

### Noteworthy Achievements

During the audit, we learned that, starting March 2016, the Region 5 human resources office began tracking all sexual harassment fact-finding investigations in the agency's national tracking database—Labor and Employee Relations Information System (LERIS)—regardless of whether disciplinary action was involved. Agency policy only requires the tracking of cases involving disciplinary actions. The additional tracking in LERIS could enhance the region's ability to determine the pervasiveness of a sexual harassment issue and address it accordingly. The additional tracking also allows for information sharing with other regions, which could promote consistency in corrective actions agencywide.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
INSPECTOR GENERAL

June 20, 2017

**MEMORANDUM**

**SUBJECT:** Discussion Document:  
EPA Region 5 Has Adequate Policies and Procedures for Addressing  
Sexual Harassment Allegations  
Project No. OA-FY16-0177

A handwritten signature in blue ink, which appears to read "John Trefry", is placed over the subject line.

**FROM:** John Trefry, Director  
Forensic Audit

**TO:** Robert A. Kaplan, Acting Regional Administrator  
Region 5

This is discussion document on our review of a hotline complaint conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The OIG may revise this discussion document and, therefore, the report does not represent the final position of the OIG on the subjects reported. You are not authorized to distribute or disclose this document or its contents, except that you may distribute it to other persons in your organization to obtain their review and comments on the subjects reported.

**Action Required**

Because this discussion document contains no recommendations, you are not required to respond. Nonetheless, you are welcome to provide a response, and the response should address the factual accuracy of the discussion document. We request that you provide a written response, or indicate you will not be providing a response, within 10 days of this discussion document's date. Please email both an Adobe PDF and Microsoft Word version of your response to [trefry.john@epa.gov](mailto:trefry.john@epa.gov).

If you or your staff have any questions regarding this report, please contact me at (202) 566-2474 or [trefry.john@epa.gov](mailto:trefry.john@epa.gov); or Angela Bennett, Project Manager at (404) 562-9844 or [bennett.angela@epa.gov](mailto:bennett.angela@epa.gov).

## ***Table of Contents***

---

<b>Purpose.....</b>	<b>1</b>
<b>Background .....</b>	<b>1</b>
<b>Responsible Offices .....</b>	<b>2</b>
<b>Noteworthy Achievements .....</b>	<b>3</b>
<b>Scope and Methodology .....</b>	<b>3</b>
<b>Results of Audit.....</b>	<b>4</b>
Human Resources Complaint Process .....	4
EEO Complaint Process .....	5
<b>Conclusion .....</b>	<b>6</b>

## Purpose

In response to a congressional request, the U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) conducted this audit to determine whether EPA Region 5's policies and practices for addressing sexual harassment complaints made through the Equal Employment Opportunity (EEO) complaint process, and the human resources complaint process, adhere to established policies and meet federal requirements.

## Background

On July 29, 2015, a congressional committee held a hearing and received testimony from EPA Region 5 employees that included concerns about how sexual harassment allegations had been addressed. On September 1, 2015, the OIG received a congressional request to investigate whether Region 5 managers appropriately addressed sexual harassment allegations.

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on several bases, including sex, and provides for recovery of compensatory and punitive damages in case of unlawful intentional violations. The act puts the primary responsibility on each of the federal agencies to assure nondiscrimination in employment. The act created the U.S. Equal Employment Opportunity Commission (EEOC) and granted the EEOC the authority to enforce the act and issue rules, regulations, orders and instructions as necessary and appropriate. Executive Order 11478 implemented the prohibition of employment discrimination on the basis of sex.

Sexual harassment regulations are codified in 29 CFR §1604.11 as follows:

(a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Pursuant to 29 CFR § 1604.11(d):

... an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless

the employer can show that it took immediate and appropriate corrective action.

EEOC Guidance No. N-915-050, issued March 19, 1990, provides further clarification and guidelines. The EEOC guidance and 29 CFR § 1604.11 encourage employers to take all steps necessary to prevent sexual harassment from occurring. According to the EEOC guidance:

An effective preventive program should include an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented. The employer should affirmatively raise the subject with all supervisory and non-supervisory employees, express strong disapproval, and explain the sanctions for harassment.

The employer should also inform employees of their rights to raise sexual harassment concerns and have procedures for raising and resolving such issues. The procedures should “ ‘encourage victims of harassment to come forward’ and should not require a victim to complain first to the offending supervisor.” The procedures should also “ensure confidentiality as much as possible and provide effective remedies, including protection of victims and witnesses against retaliation.”

Under the EEOC guidance, when an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should:

- Investigate promptly and thoroughly;
- Take immediate and appropriate corrective action by doing whatever is necessary to end the harassment;
- Make the victim whole by restoring lost employment benefits or opportunities; and
- Prevent the misconduct from recurring.

Regulations and details of the EEO complaint process are in 29 CFR Part 1614. The regulation requires federal agencies to have procedures for processing discrimination complaints.

## **Responsible Offices**

Region 5's Resources Management Division, Human Resources Branch, is responsible for the addressing complaints filed through the human resources process. The Region 5 Office of Civil Rights is responsible for addressing informal complaints made through the EEO process.

## Noteworthy Achievements

During the audit, we learned that, starting March 2016, the Region 5 Human Resources Branch began tracking all sexual harassment fact-finding investigations in the agency's national tracking database—Labor and Employee Relations Information System (LERIS)—regardless of whether disciplinary action was involved. Agency policy only requires the tracking of cases involving disciplinary actions. The additional tracking in LERIS could enhance the region's ability to determine the pervasiveness of the sexual harassment issue and address it accordingly. The additional tracking also allows for information sharing with other regions, which could promote consistency in corrective actions agencywide.

## Scope and Methodology

We conducted this audit from August 2016 to June 2017, in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine whether Region 5's policies and practices adhere to established policies and meet federal requirement, we performed the following:

- Reviewed applicable federal laws, regulations and EEOC guidance.
- Reviewed agency and Region 5 policies and procedures pertaining to sexual harassment allegations.
- Interviewed officials in Region 5's Human Resources Branch and Office of Civil Rights to obtain an understanding of the general processes for addressing sexual harassment allegations.
- Reviewed case files provided by the agency for sexual harassment allegations processed through Region 5's Human Resources Branch and Office of Civil Rights from fiscal years 2012 through 2016.
- Interviewed agency officials involved in addressing the sexual harassment allegations processed from fiscal years 2012 through 2016.

Our audit was limited to only those processes conducted within Region 5's Human Resources Branch and Office of Civil Rights. The audit did not include the process for addressing formal EEO complaints conducted by the EPA headquarters' Office of Civil Rights.

## Results of Audit

Region 5's policies and practices for handling sexual harassment allegations adhere to EPA policies and procedures and meet federal requirements in 29 CFR §§ 1604.11 and 1614, as well as EEOC guidance.

EPA sexual harassment complaints may be filed through the human resources or EEO complaint process. Region 5 identified 12 sexual harassment complaints processed between fiscal years 2012 through 2016—six by the Human Resources Branch and six by the Office of Civil Rights. Our review of the case files for the 12 complaints and interviews with the EPA officials involved in resolving these complaints confirmed that Region 5 addressed the complaints in accordance with agency policies and procedures.

### ***Human Resources Complaint Process***

Region 5's Human Resources Branch addressed sexual harassment complaints made through the human resources process in accordance with agency policies and procedures that meet federal requirements. Consistent with federal regulations in 29 CFR § 1604.11 and EEOC guidance, the EPA has explicit policies against sexual harassment and procedures that require sexual harassment allegations to be investigated promptly, and immediate and appropriate corrective actions to be taken to address the allegations and prevent the misconduct from recurring.

The EPA Administrator issued EEO and anti-harassment policy statements several times since 2011. These policy statements include:

- Reaffirm that sexual harassment is unlawful and will not be tolerated.
- Clarify that harassment may be misconduct subject to corrective or disciplinary action, even if it does not rise to the level of unlawful harassment.
- Require sexual harassment to be reported immediately to a first-line supervisor, a higher-level supervisor or manager in the affected person's chain of command, the OIG, or Labor Employee Relations staff.
- Require supervisors to investigate and take corrective actions promptly.

The Region 5 Regional Administrator and Deputy Regional Administrator also issued a number of memorandums between fiscal years 2014 and 2015 that reiterated the Administrator's statements that discrimination and harassment are not tolerated. The memorandums made it mandatory for all employees to report sexual harassment they witnessed or allegations they received.

The EPA's formal procedures for addressing sexual harassment allegations through the human resources process were first issued on November 20, 2015, under EPA Order 4711. Prior to EPA Order 4711, Region 5 followed its own step-by-step guide developed by the Human Resources Branch for use by supervisors and managers in responding to sexual harassment allegations.

Based on our review of the case files for the six complaints filed through the human resources process and our interviews with the officials involved in resolving these complaints, Region 5 adhered to the procedures in EPA Order 4711. Management, in consultation with Region 5's Human Resources Branch and Office of Counsel, investigated the sexual harassment allegations promptly and thoroughly, and took immediate and appropriate corrective actions to address the complaints.

As discussed in the "Noteworthy Achievement" section above, Region 5 is tracking all sexual harassment fact-finding investigations in LERIS. However, it should be noted that "sexual harassment" cases do not have their own category within the system. Sexual harassment complaints are tracked under "Additional ER/LR<sup>1</sup> Activities" (i.e., miscellaneous or other category). As a result, sexual harassment cases cannot be easily sorted and identified. According to Region 5 officials, the universe of cases identified for our audit had to be manually extracted from a LERIS report of cases in the "Additional ER/LR Activities" category. The lack of a separate category for "sexual harassment" cases reduces the agency's ability to obtain data to effectively self-monitor (e.g., determine the extent of the sexual harassment issue and address accordingly). While LERIS programming and specifications are not within Region 5's controls, it would be beneficial for the agency to enhance its system to allow easy identification of the sexual harassment cases.

### ***EEO Complaint Process***

Region 5 addressed sexual harassment complaints made through the EEO process in accordance with EPA policies and procedures that meet federal requirements. The agency issued standard operating procedures on January 24, 2014, to make sure EEO complaints are addressed in accordance with the federal regulations in 29 CFR § 1614 and EEOC Management Directive 110. The procedures established timeframes and detailed procedures for the informal and formal complaint resolution process, as well as complaint tracking in the iComplaints database.

Based on our review of the case files and iComplaints event logs for the six cases processed through the Region 5 Office of Civil Rights, as well as interviews with EEO officials, Region 5 conducted the informal stage of the EEO sexual harassment complaint process in accordance with the federal regulations and agency policies and procedures explained above. As discussed in the Scope and

---

<sup>1</sup> ER/LR stands for "Employee Relations/Labor Relations."

Methodology section, we did not review the formal complaint process. Once an allegation becomes a formal complaint, the case is handed over to the EPA headquarters' Office of Civil Rights.

## **Conclusion**

EPA policies and procedures for addressing sexual harassment allegations meet federal requirements, and Region 5 followed the agency policies and procedures. Our interview of agency officials and review of case files confirmed that Region 5 managers properly investigated and addressed sexual harassment allegations in accordance with agency policies and procedures. Therefore, no recommendations are being made.

**From:** Levy, Eric  
**Sent:** Wednesday, July 05, 2017 11:03 AM  
**To:** Bennett, Angela <[Bennett.Angela@epa.gov](mailto:Bennett.Angela@epa.gov)>  
**Subject:** RE: OIG Discussion Document for Audit of Region 5's Policies and Procedures for Addressing Sexual Harassment Allegations

That's my understanding based on Amy's message of June 22, 2017.

**From:** Bennett, Angela  
**Sent:** Wednesday, July 05, 2017 9:54 AM  
**To:** Levy, Eric <[levy.eric@epa.gov](mailto:levy.eric@epa.gov)>  
**Cc:** Sharon, Scott <[sharon.scott@epa.gov](mailto:sharon.scott@epa.gov)>; Sanders, Amy <[Sanders.Amy@epa.gov](mailto:Sanders.Amy@epa.gov)>; Marlinga, Richard <[marlinga.richard@epa.gov](mailto:marlinga.richard@epa.gov)>; Wong, Lela <[Wong.Lela@epa.gov](mailto:Wong.Lela@epa.gov)>; Trefry, John <[Trefry.John@epa.gov](mailto:Trefry.John@epa.gov)>  
**Subject:** RE: OIG Discussion Document for Audit of Region 5's Policies and Procedures for Addressing Sexual Harassment Allegations

Good catch by Scott. We will make the suggested change. So, are we good to move forward with the final report?

**From:** Levy, Eric  
**Sent:** Wednesday, July 05, 2017 10:47 AM  
**To:** Bennett, Angela <[Bennett.Angela@epa.gov](mailto:Bennett.Angela@epa.gov)>  
**Subject:** FW: OIG Discussion Document for Audit of Region 5's Policies and Procedures for Addressing Sexual Harassment Allegations

FYI

**From:** Sharon, Scott  
**Sent:** Tuesday, June 20, 2017 4:28 PM  
**To:** Sanders, Amy <[Sanders.Amy@epa.gov](mailto:Sanders.Amy@epa.gov)>; Marlinga, Richard <[marlinga.richard@epa.gov](mailto:marlinga.richard@epa.gov)>; Levy, Eric <[levy.eric@epa.gov](mailto:levy.eric@epa.gov)>; Matthews, Florine <[Matthews.Florine@epa.gov](mailto:Matthews.Florine@epa.gov)>  
**Subject:** RE: OIG Discussion Document for Audit of Region 5's Policies and Procedures for Addressing Sexual Harassment Allegations

FYI – In the two places I noted, it says “EPA's sexual harassment complaints may be filed through the human resources or EEO complaint process.” It should say, “EPA's sexual harassment complaints may be filed through the human resources ~~process~~, ~~or~~ EEO complaint process ~~or both~~.”

*Scott Sharon*

HR Specialist (Labor & Employee Relations) /  
Local Reasonable Accommodation Coordinator  
77 W. Jackson Blvd  
Mail Code: MP-10J  
Chicago, IL 60604  
(312) 886-6017

[sharon.scott@epa.gov](mailto:sharon.scott@epa.gov)